

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

DAVID M. ELSEA and JEANNE MORGAN, Individually and as Class Representatives,
Appellants,

v.

U.S. ENGINEERING COMPANY, a Corporation, and JACKSON COUNTY, MISSOURI,
Respondents.

DOCKET NUMBER WD77687

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: March 17, 2015

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Jack N. Peace, Judge

JUDGES

Special Division: Pfeiffer, P.J., and Martin and Gabbert, JJ.

CONCURRING.

ATTORNEYS

Louis C. Accurso, Burton S. Haigh, and Cory L. Atkins, Kansas City, MO

Edward D. Robertson, Jr., Mary D. Winter, and Anthony L. DeWitt, Jefferson City, MO

Attorneys for Appellants,

James D. Griffin, Michele F. Sutton, Dennis J. Dobbels, Anthony J. Romano, Travis L. Salmon,
and Jennifer J. Eng, Kansas City, MO

Mark G. Arnold and Matthew R. Grant, St. Louis, MO

Attorneys for Respondents.



MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

DAVID M. ELSEA and JEANNE)	
MORGAN, Individually and as Class)	
Representatives,)	
)	
Appellants,)	
v.)	OPINION FILED:
)	March 17, 2015
U.S. ENGINEERING COMPANY, a)	
Corporation, and JACKSON COUNTY,)	
MISSOURI,)	
)	
Respondents.)	

WD77687

Jackson County

Before Special Division Judges: Mark D. Pfeiffer, Presiding Judge, and Cynthia L. Martin and Anthony Rex Gabbert, Judges

David M. Elsea and Jeanne Morgan, individually and as class representatives (“Plaintiffs”), filed a tort action in the Circuit Court of Jackson County, Missouri (“circuit court”), on behalf of a proposed class of persons exposed to asbestos fibers claimed to have been caused by U.S. Engineering Company’s demolition, removal, and disposal of asbestos during renovation of the Jackson County Courthouse. Plaintiffs sought recovery of compensatory damages for the expense of prospective medical monitoring allegedly necessitated by a defined amount of minimum exposure to asbestos fibers at the Courthouse.

Plaintiffs sought class certification pursuant to Rule 52.08(b)(3), asserting that common issues of law and fact would predominate over individual issues. After a four-day evidentiary hearing, the circuit court concluded the opposite—that individual issues would predominate over common issues—and denied class certification. Plaintiffs sought and received this court’s permission to file an interlocutory appeal of the circuit court’s decision to deny class certification. On appeal, Plaintiffs assert that the circuit court abused its discretion when it misapplied the law by applying personal injury concepts to Plaintiffs’ medical monitoring claim and in holding that individual personal injury issues were predominate over common issues.

REVERSED AND REMANDED.

Special Division holds:

Plaintiffs met the four Rule 52.08(a) prerequisites for class certification: (1) the class is so numerous that joinder of all members is impracticable (numerosity); (2) there are questions of law or fact that are common to the class (commonality); (3) the asbestos exposure claims of Plaintiffs are typical of the class claims (typicality); and (4) Plaintiffs and their counsel will fairly and adequately protect the class interests (adequacy).

Plaintiffs also satisfied the requirements of Rule 52.08(b)(3), which requires the record to demonstrate that the questions of law or fact common to the class members' asbestos exposure predominate over questions affecting only individual class members (predominance) and that a class action is superior to other methods of adjudication (superiority).

The putative certified class also met two additional implied requirements: it is capable of legal definition as persons who have worked in the Courthouse or who were required to spend a minimum period of time (eighty hours or ten days), and have received specified, medically significant minimum levels of exposure to asbestos fibers present in the Courthouse from 1983 to the present; and the Plaintiffs are members of the putative class.

Accordingly, the circuit court erred in denying class certification.

Opinion by: Mark D. Pfeiffer, Presiding Judge

March 17, 2015

* * * * *

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.